



INTERIOR BOARD OF INDIAN APPEALS

Kee Grinde and Sydney Holderness v. Navajo Regional Director, Bureau of Indian Affairs

42 IBIA 36 (11/15/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

KEE GRINDE,	:	Order Affirming Decision
Appellant,	:	
	:	
and	:	
	:	
SYDNEY HOLDERNESS,	:	
Appellant,	:	Docket Nos. IBIA 04-37-A
	:	IBIA 04-38-A
v.	:	
	:	
NAVAJO REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	November 15, 2005

Kee Grinde and Sydney Holderness (Appellants) seek review of a December 16, 2003 decision of the Navajo Regional Director, Bureau of Indian Affairs (Regional Director; BIA), announcing a new negotiated annual rental rate for the renewal of Lease No. N00-C-14-20-7365 for Navajo Allotment No. 1581 (Allotment 1581). Because the two appeals raise the same issues, they are consolidated for the purposes of opinion. For the reasons stated below, the Board affirms the Regional Director's decision.

Background

Appellants are two of the Indian landowners of Allotment 1581. Allotment 1581 contains 160 acres, more or less, and is described as NW/4, Section 22-16-N-20W, McKinley County, New Mexico.

On November 18, 1977, the Acting Assistant Navajo Area Director approved Lease No. N00-C-14-20-7365 between the Indian landowners of Allotment 1581 and the Gulf

Oil Corporation (Gulf Oil). 1/ The lease had a term of 25 years, beginning on May 1, 1977, and expiring on May 1, 2002. Paragraph 19 of the lease provided:

As authorized by 25 C.F.R. § 131.8(a) Lessee shall have the right to renew the lease for an additional term of 25 years upon the payment of a sum determined by fair market appraisal and as designated by the Secretary. 2/

On January 16, 2001, Gulf Oil's sublessee, Pittsburgh & Midway Coal Mining Co. (P&M), notified BIA of its intent to exercise its right to renew the lease for another 25 years. On July 2, 2001, P&M sent BIA an appraisal report for Allotment 1581, which determined the fair market rental for the property to be \$4,160 a year.

On September 18, 2001, BIA notified P&M that it disagreed with its appraisal, and that it had determined the fair market rental rate for Allotment 1581 to be \$8,000 per year. BIA and P&M then exchanged a series of letters regarding the fair market rental rate for Allotment 1581. BIA issued its final decision concerning the rate on December 26, 2001, setting it at \$8,000 a year for 25 years. On April 25, 2002, P&M sent BIA a check for \$8,000 to cover one year rental for Allotment 1581.

On December 16, 2003, the Regional Director wrote to the Indian landowners of Allotment 1581. The letters to both Appellants provided:

This letter is in reference to your Navajo Allotment No. 1581 which was leased to [P&M], Lease No. N00-C-14-20-7365 on May 1, 1977. P&M is exercising its option to renew their lease for an additional twenty-five (25) years as stipulated in Provision No. 19. of the lease. P&M appraised your allotment at \$4,160 per year for the next 25 years. The appraisal report was submitted to the Bureau for its review and acceptance. The Bureau disagreed with the appraised value and negotiated the fair market value to be \$8,000

1/ The purpose of the lease was to allow use of the surface of the allotment, which is owned in trust by the allottees, to access coal deposits underneath the allotment, which are owned by the United States.

2/ Subsection 131.8(a) of 25 C.F.R. (1977) provides that "[l]eases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years, except such leases of land on the * * * Navajo Reservation, Ariz.; N. Mex., and Utah * * *, which leases may be made for terms of not to exceed 99 years."

per year for the next 25 years. This letter notifies you that the fair market value of the lease renewal has been appraised and negotiated at \$8,000 per year and P&M has agreed to pay this amount as the annual rental as required by 25 C.F.R. § 162.604(b). Your share of the payment will be \$250.00 plus accrued interest based on the amount of the interest you own in the allotment[.] 3/

The Regional Director's decision notified Appellants of their appeal rights.

Appellants each filed timely notices of appeal. Appellants, P&M, and the Regional Director filed briefs. 4/

Discussion

In their notices of appeal, Appellants stated that they were exercising their appeal rights "regarding the new negotiated rental rate." In their opening briefs, however, Appellants stated that they found no error in the fair market value of the surface lease for Allotment 1581. Instead, the majority of Appellants' arguments challenge the validity of the original lease.

Appellants cannot challenge the validity of the lease in this appeal. The only issue before the Regional Director for decision, and thus the only decision subject to review, was the setting of the new rental rate for Allotment 1581. See 43 C.F.R. § 4.318 (appeal will be limited to those issues that were before the BIA official). Under the terms of the original lease, P&M had a contractual right to renew the lease for another 25 years so long as it paid the sum designated by the Secretary. BIA is bound by the terms of a lease it has approved if those terms do not conflict with governing Departmental regulations. See, e.g., First Mesa Consolidated Villages v. Phoenix Area Director, 26 IBIA 18, 30 (1994). Because P&M

3/ The amount of payment for each owner was based on their ownership interest. The payment was the same for each Appellant because their fractional ownership interests in Allotment 1581 are the same (1.5625 percent).

4/ P&M filed a motion to intervene and participate as a party in the proceedings in both appeals. On April 14, 2004, the Board issued an order informing P&M that it had previously been identified as an interested party in the proceedings and was considered a party with full rights to participate.

paid the amount required by the Secretary, and Appellants did not contend that the lease violates Departmental regulations, BIA was bound to accept the renewal. 5/

Appellant Grinde argues that the re-negotiated rental rate materially altered the original lease contract and thus created a new contract that is subject to review. To support this proposition, he argues that, under insurance law, the renewal of an insurance policy constitutes a separate contract. He also cites to two cases, Providence Bank v. Billings, 29 U.S. 514 (1830), and First National Bank v. Abraham, 97 N.M. 288 (1982), which held that specific changes in the terms of a contract constituted material alterations to the contract, thus creating a new and separate contract. This argument lacks merit. The cases relied on by Appellant do not deal with automatic renewal provisions and are inapposite.

Finally, Appellant Grinde argues that, if the Board is not persuaded by his other arguments, the Board should, as a matter of fairness and equity, require BIA's rental valuation for Allotment 1581 to be indexed for inflation. This the Board cannot do. Paragraph 19 of the lease expressly provides that the rental rate should be determined by a fair market appraisal. There is no provision in the lease for indexing for inflation. The Board lacks the authority to insert new terms into the lease.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Regional Director's decision.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

5/ Appellants assert that the lease violates Navajo laws regulating the privilege of doing business on Navajo lands and the lease of lands under tribal jurisdiction. The question whether the lease was subject to or complied with Navajo law was not before the Regional Director and thus also is not within the scope of this appeal. In any event, while Navajo laws that are inconsistent with federal regulations may in some cases be applied to tribal land, they cannot apply to individually owned land, such as the land at issue in this appeal. See 25 C.F.R. § 162.109(b) (2002).